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Court : Delhi

Decided On : Nov-19-2005

Reported in : 2006(3)SLJ245(Delhi)

Judge : Markandeya Katju, C.J. and; Madan B. Lokur, J.

Acts : Indian Companies Act; Industrial Disputes Act - Sections 33, 33(1), 33(2) and 33A

Appeal No. : LPA 885/2004

Appellant : Romi Sharma and ors.

Respondent : Eih Ltd. and ors.

Advocate for Def. : Raj Birbal, Sr. Adv. and ; S.K. Jain, Adv.

Advocate for Pet/Ap. : Mahesh Srivastava, Adv

Disposition : Appeal dismissed

Judgement :

Markandeya Katju, C.J.

1. This LPA has been filed against the judgment of a learned Single Judge dated 5.7.2004 by which he has disposed of three writ petitions being Writ Petition Nos. WP(C) Nos. 4361/1997, 2736/1998 and 3115/1998 by a common judgment.

2. The respondent No. 1 is a company incorporated under the Indian Companies Act. It runs a hotel known as 'The Oberoi' at Dr.Zakir Hussain Marg, New Delhi. The workmen concerned, D.S.Teja, L.K.Shandilya, Ram Charan and Rohit Sharma had been employed in the said hotel.

3. The appellants were members of the Hotel Oberoi Inter Continental Employees Union. The management was recognizing the 'Hotel Oberoi New Delhi Employees Union' as the union of its workmen and had entered into a settlement with the said union. Hotel Oberoi Inter Continental Employees Union was not recognizing the said settlement as it claimed that Hotel Oberoi New Delhi Employees Union was a stooge union of the management. This resulted in unrest and the management obtained an injunction against Hotel Oberoi Inter Continental Employees Union and its office bearers from holding dharnas within the hotel premises or in a manner which obstructed ingress and egress to the hotel premises. The management received two reports that firstly at 12.15 PM on 30.5.1994 the appellants concerned and a few others unauthorisedly entered one of the restaurants in the hotel namely Baan Thai Restaurant. They assaulted the restaurant manager Mr.Javed I.Baig who was abused verbally and physically thrown out of the restaurant. The cause of the assault was allegedly that he had marked one Mr.David Sherpa, a steward, as being absent on 29.5.1994.

4. In its award of the Industrial Tribunal the tribunal observed in paragraph 17 as follows:

In the present case, the complainants/workmen unauthorisedly entered into Baan Thai Restaurant of the management on 30.5.1994 at 12.15 PM. Mr.Javed I.Beig was posted as Restaurant Manager. He entered into the restaurant and then the four complainants with another companion surrounded Mr.Beig and started abusing him in filthy language and then started questioning him about marking absence of Mr.David Sherpa, Steward, who remained absent on 29th May evening from his duty. inspire of offensive and threatening attitude of the workers, Mr.Beig kept quiet. Then without any provocation, the workers disrupted Mr.Beig's work surrounded him, abused him and pushed him forcefully towards the service door. In the process Mr.D.S.Teja caught hold Mr.Beig's jacket and pushed him badly.

Lalit Kumar pulled Mr.Beig's tie and Manoj Kumar pushed Mr.Beig's face. Mr.Teja also called him 'dog'. Mr.Beig was physically thrown out from the restaurant and in the process he was kicked on his body. Mr.Beig was physically lifted and was dumped in the kitchen of Baan Thai Restaurant and was asked to get lost. The restaurant was about to open for the public at the time.

5. Heard learned counsel for parties.

6. The facts in detail have been set out in the judgment of the learned Single Judge and hence we are not repeating the same except where required.

7. The appellants were workmen of the respondent company. They were served with charge sheets dated 6.6.1994 and 14.6.1994 respectively on grave and serious charges including assault, abuses, physical manhandling etc. A domestic enquiry was held and they were given an opportunity of hearing. The enquiry officer found the charges to be proved and on the basis of his report the workmen were dismissed. The management then applied under Section 33(2)(b) of the Industrial Disputes Act for approval of its action. That application was rejected on a technical ground by the Industrial Tribunal by its order dated 15.5.1998. The Tribunal in its order held that the management was required to file an application under Section 33(1)(b) for permission, instead of an application under Section 33(2)(b) for approval.

8. The workmen then filed an application under Section 33A of the Industrial Disputes Act before the Industrial Tribunal-II, Delhi. On that application under Section 33A the Tribunal framed three issues which were as follows:

(i) whether the respondent /management contravened the provisions of Section 33 of I.D. Act? OPC.

(ii) if issue No. 1 is decided in favor of the complaints, whether the enquiry held against the complainants was not fair and proper as claimed by them? OPC.

(iii) to what relief, if any, are the complainants entitled.

9. The Tribunal in its order dated 2.12.2000 noted in paragraph 22 that the management's application under Section 33(2)(b) of th1s Act had already been rejected by the Tribunal by its order dated 15.5.1998 and hence the first issue was decided against the management. However, on the second issue, i.e., whether the enquiry was fair and proper, the Tribunal held a detailed discussion and found that the enquiry was fair and proper.

10. The operative portion of the order dated 2.12.2000 states as under:

Considering the above discussion, I find no defect in the conduct of the enquiry. It was conducted as per rules, and principles of natural justice. The finding of the enquiry officer is not perverse. Issue is decided in favor of the management and against the complainants.

11. As regards the third issue, the Tribunal was of the view that it will be decided after further hearing in the complaint under Section 33A.

12. Ultimately the application of the workman under Section 33A was dismissed by the Tribunal by its award dated 3.7.2001. The Tribunal by its award dated 3.7.2001 upheld the dismissal order against which the writ petitions were filed which were dismissed. Hence this appeal.

13. It may be mentioned that three writ petitions had been filed in this Court which were allowed by a common impugned judgment of the learned Single Judge dated 5.7.2004. As regards Writ Petition (Civil) 4361/1997, the prayer in the same was to quash the award of the Industrial Tribunal dated 13.6.1997. By that award the Tribunal held that the suspension of the workmen by order dated 30.5.94 was illegal as on the date of suspension no enquiry was pending against the workmen and hence it was in violation of the principles of natural justice.

14. It may be mentioned that the charge sheet was issued on 6.6.1994, i.e. one week after the suspension order dated 30.5.1994. Hence it was held by the Tribunal that the suspension was illegal.

15. The relevant standing order of Hotel Oberoi reads as follows:

A workman against whom any action is proposed to be taken for misconduct may be suspended pending the inquiry or for the period if any, allowed to him for giving his Explanationn.

16. In our opinion, the aforesaid standing order cannot be interpreted in a pedantic or mechanical manner. It must be understood that the purpose of suspension of an employee is that a situation may arise which calls for some immediate action against the concerned employee pending the final action. There are situations where unless immediate action is taken a grave situation may develop in the establishment. Hence the purpose of suspension is to cool down matters or diffuse it in such a serious situation by taking immediate action pending the final decision.

17. Once we keep this concept clear in mind, it will be immediately realized that the expression 'suspension pending the enquiry' does not mean that no suspension order can ever be passed before the charge sheet. It all depends on the facts of the case. A practical view of the matter has, thereforee, to be taken and we cannot interpret the expression 'suspension pending the enquiry' in the rigid manner adopted by the Tribunal. A purposive interpretation has to be adopted in such a case vide Hindustan Lever Ltd. v. Ashok Vishnu Kate, : (1996)ILLJ899SC , Administrator, Municipal Corporation v. D.Dahankar, : AIR 1992 SC1846 , Director of Enforcement v. Deepak Mahajan, : 1994 CriLJ2269 etc. In the present case, the suspension order was passed on 30.5.1994 and the charge sheet charge sheet was issued only a week thereafter, i.e. 6.6.1994. A very serious incident had occurred calling for some immediate action. Hence, in our opinion, the suspension order cannot be said to be illegal. We, thereforee, agree with the view taken by the learned Single Judge in the impugned judgment, though we are adding our own reasons.

18. In any event, since the suspension order was followed by the dismissal order dated 31.5.1996, the said suspension has merged into the dismissal order vide H.L.Mehra v. Union of India, : [1975]1SCR138 . Hence, the suspension order did not exist after the dismissal order.

19. No doubt, the Tribunal had by its order dated 13.6.1997 and 2.12.2000 held that Section 33 of the Industrial Disputes Act had been violated. However, it is

important to note that merely because the worker proves the violation of Section 33 it does not automatically follow that the Tribunal must necessarily set aside the punishment and order reinstatement without examining anything further vide Punjab N. Bank v. A.I.P.N.B.E. Federation : (1959)IILLJ666SC . Termination of service in violation of S. 33 is not void or non-est vide Phoenic Plywood v. I.T. 1979 (38) F.L.R. 153 and also M./s Punjab Beverages Pvt. Ltd. V. Suresh Chand, : (1978)IILLJ1SC . The Tribunal, on proof of violation of Section 33, must go further and consider the cause on merits vide Delhi Cloth and Gen.Mill v.Rameshwar : (1960)IILLJ712SC and also P.N.Misra v. State of U.P. : (1973)ILLJ354All , Equitable Coal Co.Ltd. v.Algu Singh 1958 I LLJ 793 SC, Hindustan General Electrical Corp. Ltd v. B.Prasad : (1971)IILLJ340SC . As the Supreme Court observed: ' employee would not succeed in obtaining an order of reinstatement merely by proving contravention of section 33 by the employer. After such contravention is proved it would still be open to the employer to justify the impugned dismissal on merits.' vide Delhi Cloth & General Mills v. Rameshwar (supra), C.A.Rodrick v. Karam Chand Thapar 1963 I LLJ 248 SC, Punjab National Bank Ltd. v. Their Workmen : (1959)IILLJ666SC etc. From this point of view the scope of section 33A is wider than that of Section 33, for whereas in the former the Tribunal can go into merits, in the latter it cannot do so vide Andhra Pradesh State Road Transport Corpn. 1971 Lab.IC 222; Automobile Products v. Rukmaji : (1955)ILLJ346SC ., Indramer Co.v. Baren De 1958 II LLJ. 556 S.C.; Delhi Cloth Mills v. Addl. Tribunal : (1960)IILLJ712SC .

20. Hence merely because the application of the management under Section 33(2)(b) for approval of its action had been rejected by the Tribunal, it does not follow that the termination order had automatically become void or non est. We fully agree with the view taken by the learned Single Judge in the impugned judgment that since the workmen filed an application under Section 33A which was rejected, they cannot claim reinstatement merely because the application of the management under Section 33(2)(b) had been rejected. In M./s Punjab Beverages Pvt. Ltd. V.Suresh Chand, : (1978)IILLJ1SC it was held :

It will, thereforee, be seen that the first issue which is required to be decided in a complaint filed by an aggrieved workman under section 33A is whether the order

of discharge or dismissal made by the employer is in contravention of Section 33. The foundation of the complaint under Section 33A is contravention of Section 33 and if the workman is unable to show that the employer has contravened section 33 in making the order of discharge or dismissal the complaint would be liable to be rejected. But if the contravention of section 33 is established, the next question would be whether the order of discharge or dismissal passed by the employer is justified on merits. The Tribunal would have to go into this question and decide whether, on the merits, the order of discharge or dismissal passed by the employer is justified and if it is, the Tribunal would sustain the order, treating the breach of S. 33 as a mere technical breach....But this much is clear that mere contravention of Section 33 by the employer will not entitle the workman to an order of reinstatement, because inquiry under Section 33A is not confined only to the determination of the question as to whether the employer has contravened Section 33, but even if such contravention is proved, the Tribunal has to go further and deal also with the merits of the order of discharge or dismissal.

21. In any event, assuming that the suspension on 30.5.1994 was invalid, it would remain invalid at most only till 6.6.1996 when admittedly the charge sheet was issued. Hence from 6.6.1994 the suspension order certainly became valid.

22. The misconduct conducted by the appellants was very serious and we have no sympathy for such workmen. In fact no organisation can function if such action of indiscipline and misconducts are permitted or tolerated. The recent trend of Supreme Court decisions have all deprecated such misconducts by workmen in no uncertain terms and have held that such acts cannot be tolerated as they are subversive of the discipline of the establishment, vide Mahindra and Mahindra v. N.B.Narawade : (2005)ILLJ 1129 SC , Employers Management, Colliery, M/s Bharat Cooking Coal Ltd. etc.v. Bihar Colliery Kamgar Union through Workmen : (2005)ILLJ 1135 SC , and U.P.S.R.T.C. v. Subhash Chandra Sharma : (2000)ILLJ 1117 SC etc. In our opinion, no organization can run smoothly and efficiently if such kind of indiscipline and misbehavior is countenanced.

23. We fully agree with the learned Single Judge and dismiss the appeal.

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